IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

WP(C).No. 15714 of 2006(U)

PETITIONER:

---

1. KISHORE RAM, LECTURER IN ENGLISH, N.S.S. COLLEGE, NEMMARA.

2. SMT.SREEJA.G., LECTURER IN ENGLISH, N.S.S. COLLEGE, NEMMARA.

3. SMT.SREELA P.NAIR, LECTURER IN ENGLISH, N.S.S. COLLEGE, NEMMARA.

4. SMT.VIMALA.M., LECTURER IN ECONOMICS, VIMALA COLLEGE, THRISSUR.

5. SHRI.P.SURESH BABU, LECTURER IN ECONOMICS, N.S.S. COLLEGE, NEMMARA.

6. BALAKRISHNAN PANAYANTHITTA, LECTURER IN BOTANY, N.S.S COLLEGE, NEMMARA.

7. GEETHA.R.NAIR, LECTURER IN BOTANY, N.S.S. COLLEGE, NEMMARA.

8. SMT.THULASI.K.A., LECTURER IN HISTORY, N.S.S. COLLEGE, NEMMARA.

9. DR.C.V.SREERANJIT KUMAR, LECTURER IN ZOOLOGY, N.S.S. COLLEGE, NEMMARA.

10. DR.BIJU KUMAR.B.S., LECTURER IN ZOOLOGY, N.S.S.COLLEGE, NEMMARA.

11. RAJAGOPAL.P.K., LECTURER IN POLITICS, N.S.S. COLLEGE, NEMMARA.

BY ADV. SRI.N.NANDAKUMARA MENON

RESPONDENTS:
---

1. UNIVERSITY OF CALICUT,
   REPRESENTED BY ITS REGISTRAR,
   CALICUT UNIVERSITY P.O., CALICUT.

2. THE STATE OF KERALA, REPRESENTED BY THE
   SECRETARY TO GOVERNMENT FOR HIGHER EDUCATION,
   SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF COLLEGIATE EDUCATION,
   GOVERNMENT OF KERALA, VIKAS BHAVAN,
   TRIVANDRUM.

4. THE DEPUTY DIRECTOR OF COLLEGIATE
   EDUCATION. THRISSUR.

5. THE NSS COLLEGES CENTRAL COMMITTEE,
   REPRESENTED BY ITS SECRETARY,
   CHANGANACHERRY-2.

6. THE PRINCIPAL, N.S.S. COLLEGE,
   NEMMARA.

R1 BY ADV. SRI.E.S. ASHRAF, SC, CALICUT UTY
R2 TO R4 BY G.P. SMT. MEERA
R5 & R6 BY ADV. SHRI P. GOPAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 7/02/2007, THE COURT ON 13.2.2007 DELIVERED THE FOLLOWING:

3 T.R. Ramachandran Nair, J.

- -

W.P.(C).NO.15714 of 2006-U

- -

Dated this the 13th day of February, 2007

JUDGMENT

The petitioners herein challenge Ext.P19 communication issued by the 4th respondent whereby, the 4th respondent has raised an objection in the salary bills forwarded for counter signature by him. The petitioners are seeking a further direction to the respondents to pay arrears of salary from the date of joining duty consequent on the approval of their appointments by the first respondent University and to continue to pay their monthly salary. The short facts leading to the writ petition are the following:

2. Petitioners 1 to 3 are Lecturers working under the 5th respondent Management who have been appointed pursuant to a due process of selection. Their appointment stands approved by the University as evidenced by Ext.P12. The appointment of petitioners 4 and 5 stands approved as per Ext.P13. It is averred that the 4th petitioner later on resigned from the service of 5th respondent management and has joined in Vimala College, Thrissur. Petitioners 6 and 7 were appointed as Lecturers in Botany on 19.1.2005 and 18.1.2005 respectively and the University has approved their appointment as per Ext.P14. 8th petitioner was appointed on

25.10.2004 and the appointment has been approved by the University as per Ext.P15. Similarly, the appointment of petitioners 9, 10 and 11 are seen approved as per Exts.P16 and 17 proceedings of the first respondent University with effect from 20.10.2004, 2.11.2004 and 1.12.2004 respectively.

3. According to the petitioners, they have been appointed as Lecturers in the sanctioned posts in the college and also in permanent vacancies. Ext.P18 concerns the workload and the details regarding staff strength of the teachers of the college in which the petitioners were appointed. Petitioners contend that in the light of the principles laid down by a Division Bench of this Court in **Cherian Mathew v. Principal, S.B. College, Changanassery** (1998 (2) KLT 144) and later decisions on the subject, the denial of salary is arbitrary and illegal.

4. The petitioners have produced Ext.P21 judgment of a learned Single Judge of this Court in Writ Petition (C) No.31575/2005 wherein directions have been issued to pay salary under similar circumstances. According to the petitioners, their situation is similar to that of the petitioners in that writ petition and hence similar directions are called for in this writ petition as well.

5. On behalf of the 4th respondent a counter affidavit has been filed explaining their stand. It is stated that in order to countersign the salary bill of the petitioners, it has to be ensured that all the excess teachers in the colleges under the corporate management of N.S.S. Colleges were absorbed into regular vacancies and that sufficient workload as per the norms prescribed by the U.G.C. is available to make fresh appointments. Government has constituted a committee for examining and to make recommendations to the Government on the proposal for creation and filling up of teaching posts in aided colleges. The salary of the petitioners will be admitted as and when the recommendations received from the above mentioned Government personnels for creation and filling up of teaching posts in aided colleges as per the UGC norms. It is also averred that it is the duty of the 4th respondent to verify the qualifications and workload before admitting the first salary of the newly appointed teachers as per statute, even though approval of Calicut University has been received. The counter affidavit refers to G.O.(MS) No.95/06/H.Edn. dated 10.8.2006 specifying that no new appointment of teachers can be done in any aided colleges in Kerala until the recommendation from the Committee as referred to above is received.

6. The management (5th respondent) has filed a detailed counter affidavit and an additional counter affidavit wherein also the stand taken by the fourth respondent is assailed on various grounds.

7. In the light of these contentions, the question raised will have to be examined in the light of the statutory provisions and the dictum laid down in the judgments referred to by the parties.

8. A Division Bench of this Court in the decision reported in 1998 (2) KLT 144, held as follows:

> "4. On the basis of the work load calculated in terms of Ordinance 3 in the Kerala University First Ordinance, teachers are allowed to be appointed in Colleges run by private management. The appointments so made in conformity with the work load assessed by the University are approved by the concerned University. To the teacher whose appointments is so approved, salary should be paid by the Government through Director of Collegiate Education. In other words, when a teacher is appointed by private management in terms of the provisions contained in the Kerala University First Ordinance or the Calicut University First Ordinance as the case may be, his salary has to be disbursed by the Government if that appointment has been approved by the concerned University. In case the Director of Collegiate Education doubts the propriety of the appointment of a teacher in the sense that the work load did not require the appointment of such a teacher, the issue will have to be taken up by him with the University. The University then has to re-examine the entire issue and to take a decision on the issue as to whether the appointment was proper or not. When the University takes a decision on this aspect, that decision will be binding on the Government.
>
> 5. No provision of the University Act First Statutes, Ordinance or Regulations in force enables the Government to sit in judgment

> over the decision arrived at by the University regarding the number of teachers to be appointed in a Department in a college run by a private management. In the absence of such a provision the Government is not entitled to impose a condition that prior approval from the Director of Collegiate Education is needed for a management to appoint a teacher in its staff."

The Division Bench further held that "when a teacher is appointed in accordance with the work load assessed in the above terms, the said appointment has to be honoured by the Director of Collegiate Education and salary disbursed, if the said appointment is approved by the University In case the Director doubts the correctness of that appointment, he will be at liberty to take up the matter with the University. When such a step is resorted to by the Director, the University has to examine the issue afresh and take a decision thereon. The decision so taken by the University as seen from the provisions of the Ordinance, Statute and Act is binding on the Director. In such a situation, the Director will have no other course than to disburse the salary of the teacher whose appointment is approved by the University."

9. Going by the above principles, the stand taken in the counter affidavit cannot be sustained. The main ground stated in support of the action of the 4th respondent is that the Government is awaiting the report of the committee constituted as per G.O.(Rt) No.1115/04/H.Edn. dated

17.8.2004. In view of the fact that the appointments have been approved by the University, the stand taken by the 4th respondent relying upon the above Govt. Order is not correct. It is seen from the counter affidavit that 4th respondent has no case that any steps as directed in the decision reported in 1998 (2) KLT 144 has been taken by the 4th respondent to move the University for re-examination of the issue regarding workload or the appointments made. In the absence of such a course, a mere reliance on the Govt. Order constituting a committee seems to be out of place. Even though in the counter affidavit, there is a further averment relying upon G.O.(MS) NO.95/06/H.Edn. dated 10.8.2006, it can have no application here, as the appointments have been made long prior to the above Govt. Order and the approval of such appointments have been granted by the University as per Exts.P12 to P17.

10. After considering similar objections, a learned Single Judge of this Court in Ext.P21 judgment, held that the objections cannot be sustained in law. Referring to the contention that the vacancies ought not to have been filled up by appointing fresh hands, the learned single judge held as follows:

> "..... But the peculiar situation herein is that the fifth respondent has got only one college within the jurisdiction of the first respondent-University. The fact that it owns colleges

> outside the territorial jurisdiction of the first respondent may not be of any relevance in the context of this case, particularly viewed in the light of the specific provision contained in Section 71(4) of the Kannur University Act. It imposes a specific ban on inter university transfers of teaching and non-teaching staff working in the colleges within the Kannur University. That being the rule position, it is idle for the fourth respondent to insist that the fifth respondent should bring the excess hands who were working in other colleges, though under the same management, but within the jurisdiction of other Universities."

11. From the counter affidavit of the management (respondent No.5), it is seen that the appointments have been made from the select list published as per Exts.R5(a) to R5(f). Ext.R5(g) is the workload statement issued by the Additional Director of Collegiate Education. It contains details regarding the number of posts sanctioned in different departments. It is averred in the counter affidavit that petitioners 1 to 3 were appointed to the three existing vacancies out of six posts sanctioned in the department of English. The 5th petitioner was appointed in an existing vacancy out of three posts sanctioned in the department of Economics. Similarly, petitioners 6 and 7 were also appointed in sanctioned posts in the department of Botany in the existing vacancies and 8th petitioner was appointed in an existing vacancy out of the three sanctioned posts in the department of History. It is also stated that petitioners 9, 10 and 11 also have been appointed in the sanctioned vacancies. As regards the 4th

petitioner, it is submitted that her appointment has been approved by the University and on 28.2.2006 she has been relieved from the college. It is evident from the averments in the counter affidavit that the management has two other colleges within the jurisdiction of Calicut University. Relying upon the provisions of Section 64 , it is contended that the colleges situated within the territorial jurisdiction of Kerala, Calicut, Mahatma Gandhi and Kannur University are governed by the provisions contained in the respective University Act and statutes and are to be treated separately and not a single unit. The management has no power to order inter-university transfer of a Lecturer working in a college situated within the jurisdiction of one University to a college situated within the jurisdiction of another University. The Government Orders concerning inter-university transfer only enables the teachers who have completed five years service in the University to opt for transfer to another University on specific conditions stipulated therein. It is further contended that inter-university transfer of teachers is barred under Section 64 of the Kerala and Calicut University Act, Section 68 of the Mahatma Gandhi University Act and Section 71 of the Kannur University Act. Hence, the management is not entitled to order inter-university transfers. It is therefore contended that the objection of the Deputy Director of Collegiate Education in Ext.P19 that the workload of all

the colleges under the management is to be taken into account for determining the workload in the N.S.S. College, Nenmara is unsustainable and against the provisions contained in the Act and the Statutes.

12. The above contention is well founded in the light of Section 64 of the Calicut University Act. Section 64(4) states that where a teacher is allotted to a University area under this section, he shall not be transferred to a college affiliated to any other University. Once the seniority list of teachers has been prepared by the educational agency as provided in sub-section (1) of Section 64 and once the teachers have exercised their right of option as to the University under the jurisdiction of which they opt to remain, they cannot be transferred by the management in view of sub-section (4) of Section 64. Hence, as held by the learned single judge in Ext.P21 judgment, the fact that the management owns colleges outside the territorial jurisdiction of the University, may not be of any relevance in the context of this case in the light of the provisions of Section 64(4). Therefore, the 4th respondent cannot insist that the management should first take into consideration the number of sanctioned posts in all the colleges under the management and the number of existing vacancies. Hence, the only objection raised in Ext.P19 falls to the ground.

13. Incidentally, as regards the appointment of petitioners 6 and 7,

one more issue needs to be sorted out. Petitioners 6 and 7 were appointed on 19.1.2005 and 18.1.2005 respectively, after the amendment of Section 57 of the Calicut University Act. As per Section 57(1), appointments to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government. This provision was brought into force with effect from 6.1.2005. The question is whether in view of the above provision, the management could have issued the orders of appointment as now done without getting the posts sanctioned by Government or by the officer authorised by Government.

14. It is evident that their appointments stand approved by the University as well by Ext.P14. The management has filed an additional counter affidavit explaining the circumstances leading to the appointment of petitioners 6 and 7. Exts.R5(h) and R5(j) are the true copies of the workload statements for the years 2004-2005 and 2005-2006. Ext.R5(i) is the statement showing the allotment of workload of teachers working in the department of Botany based on Ext.R5(h). Ext.R5(k) reflects the allotment of workload of teachers working in the department of Botany in the college for the year 2005-06 based on Ext.R5(j). In the additional counter affidavit, in paragraph 6 it is stated that the appointment of petitioners 6 and 7 are in

the vacancies which arose in the posts sanctioned by the Additional Director of Collegiate Education before the amendment of Section 57 of the Calicut University Act. The select list produced as Ext.R5(c) is the one wherein the names of petitioners 6 and 7 are included. The contention appears to be that these are sanctioned posts which arose prior to the amendment of Section 57 of the Act and hence the approval of their appointment is valid and legal. It is also stated that the workload in the department of Botany in the college before and after the amendment of Section 57 of the Act remains the same and no changes have occurred in view of the amendment.

15. In the counter affidavit of the 4th respondent, nothing is pointed out against the appointment of petitioners 6 and 7 based on Section 57 of the Act. As already mentioned, the contention appears to be that only after the report of the committee is received, the salary of the petitioners will be admitted.

16. It is clear from the documents produced that the appointments of all the petitioners have been approved by the first respondent University. 4th respondent has no case that any objections have been raised by 4th respondent before the University in respect of the approval already granted by the University. 4th respondent has not sought reconsideration of the approval on any grounds whatsoever. Going by the principles stated in

1998 (2) KLT 144, once the appointment has been approved by the University, the salary of the teachers have to be disbursed. 4th respondent has no power to sit in appeal over the proceedings validly issued by the University approving the appointment. Hence, the objection raised in Ext.P19 appears to be without any justification.

17. In this connection, attention has been drawn to the Division Bench judgment of this Court in Writ Appeal Nos.1722/2006 and 1761/2006 wherein the Bench in a similar case issued direction to the Deputy Director or Director of Collegiate Education to submit objections to the concerned Universities if they have any valid objections in the matter. The petitioners contend that the circumstances in those cases are different from the circumstances relating to the appointment of the petitioners herein.

18. It is clear that once the appointment has been approved by the University and in the absence of any objections raised by the Deputy Director of Education to the approval thus granted, 4th respondent cannot return the salary bills and refuse to pay salary. Once the appointment has been approved, the petitioners get valid title to hold the post and all the rights attached to the post will flow automatically. Hence there cannot be any valid objection for the disbursement of salary.

19. But in the case of petitioners 6 and 7, their appointments have been made after the coming into force of Section 57. Ext.R5(c) will show that the select list was published pursuant to a decision in the meeting held on 11.1.2005. Of course, it is true that the selection procedures were started earlier going by the averments in the counter affidavit of 5th respondent. Therefore, primafacie as Section 57 is not retrospective, it will not affect the selection process already started. Their appointments have been approved by the University also. But since the entire materials are not available, no final pronouncement is possible on this aspect in this writ petition.

20. In the light of the above, I am of the view that the course adopted by the Division Bench in the judgment in Writ Appeal Nos.1722 and 1761 of 2006 could be adopted herein also. Ext.P19 is hereby quashed. The writ petition is disposed of directing the Deputy Director or Direction of Collegiate Education to submit objections, if any, to the first respondent University within three weeks from the date of production of the copy of this judgment by petitioners and the University is directed to consider such objections within one month from the date of its receipt. Depending upon the decision of the University and on the basis of the orders of approval of appointment, the salary including arrears shall be disbursed to the

petitioners within two months from the date of receipt of the order from the first respondent University. If no such objections are preferred, the 4th respondent will take steps to disburse the salary of petitioners, including arrears, within three months from the date of production of a copy of this judgment.

The writ petition is disposed of as above. No costs.

(T.R. Ramachandran Nair, Judge.)

kav/